

FILED - USDC -NH  
2024 FEB 22 AM 10:18

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

Karen Testerman, ET AL.

Case No. **1:24-cv-00020-LM-AJ**

PETITIONER(S),

v.

CHRIS AGER, IN HIS CAPACITY AS CHAIR, NEW HAMPSHIRE REPUBLICAN STATE COMMITTEE,

DAVID SCANLAN, IN HIS CAPACITY AS SECRETARY OF STATE FOR NEW HAMPSHIRE,

RESPONDENT(S).

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**PETITIONERS' OBJECTION TO NON-PARTY NEW HAMPSHIRE REPUBLICAN  
STATE COMMITTEE'S (NHRSC'S) SURREPLY**

NOW COMES Republican voters Karen Testerman and NH state Representative David Testerman, (the "Petitioners"), and respectfully respond to the non-party New Hampshire Republican State Committee's ("NHRSC") surreply [Doc. No. 25], stating as follows:

1. The petitioners object to the non-party NHRSC's Motion for Leave to File Surreply [Doc. No. 25] in that a surreply is only allowed to address new matters raised in a reply to which a party would otherwise be unable to respond. *See Khoury v. Meserve*, 268 F. Supp. 2d 600, 605 (D. Md. 2003) ("Surreplies may be permitted when the moving party would be unable to contest matters presented to the court for the first time in the opposing party's reply.") Skinny Pancake-Hanover, LLC v. Crotix, 172 N.H. 372, FN2 (2019). L.R. 7.1 (e) (3) ("Parties should note that surreplies are not encouraged and should be filed only in exceptional circumstances.")

2. The non-party NHRSC offers nothing new in its Surreply, except to rehash its previous arguments, and is attempting a second bite at the apple. The non-party NHRSC could have responded to the points it now belatedly attempts to address and their request for surreply is unsupported. The only reason that counsel for NHRSC wants to have the NHRSC included in the suit is for indemnity purposes for Mr. Ager, under the NHRSC's bylaws.

3. While the counsel for NHRSC asserts that the NHRSC is an indispensable party – they are not. Under the narrowly tailored statute, RSA § 659:14, II - Special Provisions for State and Presidential Primary Elections, only the Secretary of State and the chair of the political party are named. And as such, they are the only state actors specifically involved in completing the requirements of the statute. See Campbell v. Bysiewicz, 242 F.Supp.2d 164, 174-75 (D. Conn. 2003). And the main crux of the complaint is based solely on the Secretary of State's interpretation of whether NH RSA § 654:34 and NH RSA § 659:14 are to be interpreted in combination or separately. See Pets' Assented-to Chris Ager's Motion for Status Conference, ¶¶ 15 – 21, Doc. No. 19.

4. Therefore, for purposes of this Complaint, the NHRSC are not a party to this suit and should be removed from the docket, and the petitioners respectfully request that the Motion for Leave to File Surreply should be DENIED.

**WHEREFORE**, the Plaintiff respectfully requests that this Honorable Court, for the reasons stated herein:


- A. Deny the non-party New Hampshire Republican State Committee's Motion for Leave to File Surreply
- B. Remove the non-party New Hampshire Republican State Committee from the docket of defendants; and,

C. For such other and further relief as may be just and equitable.

Respectfully Submitted,

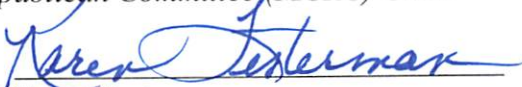
DAVID TESTERMAN, *N.H. State  
Representative, Merrimack County  
District 03*

Dated: February 22, 2024

By:   
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KAREN TESTERMAN, *both individually  
and as New Hampshire Merrimack County  
Republican Committee (MCRC) Chair*

Dated: February 22, 2024

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent by electronic means and US mail to:

David Scanlan, Respondent  
Secretary of State  
ATTENTION: Brendan Avery O'Donnell  
Election Law Unit Chief  
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Chris Ager, Co-Respondent  
Chairman, New Hampshire Republican State Committee  
ATTENTION: Attorney Bryan K. Gould  
c/o CLEVELAND, WATERS, AND BASS, P.A.  
2 Capitol Plaza  
Concord, NH 03302-1137

Dated: February 22, 2024

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Karen Testerman, *pro se*

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Dated: February 22, 2024

  
Karen Testerman, *pro se*